IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17380 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHAILESH THAKORBHAI THAKKAR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 17380 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 24/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two F.I.Rs. were registered against him before Panigat Police Station at C.R.No.512/2003 & 546/2003 on 21/10/03 & 18/11/03 for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid two registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. The petitioner has challenged the said order of his detention on various grounds. It has been contended that the petitioner had submitted his representation to the detaining authority, which was not decided by the said authority, but instead, it was forwarded to the State Government. That, therefore, a valuable right of the petitioner to get his representation decided, as early as possible, has been frustrated, and consequently, the further continuance of the detention of the petitioner cannot be sustained in the eye of law. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. The learned AGP submits affidavit which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has argued that the order of detention was passed by the detaining authority on 14/11/03, that thereafter, the petitioner submitted representation dated

28/11/03 which was received by the detaining authority on 01/12/03. At that time, the order of detention passed by the detaining authority was not approved by the State Government. Therefore, the detaining authority had power, function and duty to consider and decide the representation of the detenu. In the present case, we find that the representation dated 01/12/03 was forwarded to the Government by letter dated 02/12/03 by the detaining authority. Relevant papers have been submitted by the learned advocate for the petitioner. They are taken on record.

7. The above facts go to show that the detention order was not approved by the State Government and the detaining authority had the power to consider and decide the representation of the petitioner. In the present case, it has not been done, but instead, the detaining authority forwarded the same to the State Government. When the detaining authority had power, function and duty to decide the representation of the petitioner, it was not neceesary for it to send it to the State Government. This would show that there was non-application of mind on the part of the detaining authority with respect to its power, function and duty. The government communication shows that the said representation was rejected by the Government on 08/12/03.

8. In view of the above position, when the representation of the petitioner was not dealt with and decided by the authority, vested with the power, function and duty to consider and decide the same, then the valuable right of the petitioner has been denied. Article 22(5) of the Constitution of India provides for a valuable right to the detenu to submit effective representation against his detention. A right to submit an effective representation is coupled with a right to get decision within reasonable time. In the present case, that has not been done, and therefore, the further continuance of the detention of the petitioner cannot be upheld.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 24/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Shaileshbhai Thakorbhai Thakkar, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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